

M. Paul Anthony Vs. Bharat Gold Mines

AIR 1999 SC 1416

- **Supreme Court held that :**
- A person does not mortgage or barter away his basic rights as human being.
- Govt. does not become master of body and soul of the employee.
- Basic human rights not surrendered by the employee.
- The provision for payment of subsistence allowance ensures non-violation of right to life of employee.

- Govt. by providing job only fulfill its obligations under Constitution.
- Employee only agrees to subject himself to the regulatory measures concerning his service.
- Employees' association with Govt. or other employer like statutory or Autonomous Corporations etc., is regulated by the terms of service rules.
- Non Payment of subsistence allowance during suspension period violative of fundamental right to life.

Kumaon Mandal Vikas Nigam Ltd Vs. Girja Shankar Pant and Others.

AIR 2001 SC 24

- **Supreme Court held :**
- It is fundamental requirement of law that doctrine of natural justice be complied with.
- Natural Justice is integral part of administrative jurisprudence of this country.
- The Judicial process itself embraces a fair and reasonable opportunity to defend.
- Though disciplinary authority is the departmental judge of facts and High Court may not interfere with the factual findings but the availability of judicial review in such cases cannot be doubted.

- The whole issue in this case tantamount to a miscarriage of justice.
- The language of chargesheet shows that MD has a mind set even at the stage of framing charges.
- Prejudice apparent : Bias as stated stands proved.

State of Gujarat Vs. Umedbhai M. Patel

AIR 2001 SC 1109

- The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus :
- (i) When the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even uncommunicated entries in the confidential record can also be taken into consideration .
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
- (vii) If the officer is given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- Compulsory retirement shall not be imposed as a punitive measure.

Indian Overseas Bank Vs. Indian Overseas Bank Officer Association JT (8) 2001 SC 307

- Regulations of bank relating to conduct, discipline and appeals pertaining to officers and staff provided:
 - An officer/employee can take assistance of any other officer or employee to defend himself in disciplinary proceedings.
 - Bank amended the provision providing that the officer / employee shall not take the assistance of any other employee who has two pending disciplinary cases on hand in which he has to give assistance.
 - This amendment is based on Finance Ministry's communication dated 5.12.84 on the basis of suggestion of CVC.

- Amendment challenged in High Court as being violative of Art. 14 of Constitution.
- High Court hold amendment discriminatory more so when no such restriction was placed vis-à-vis the managements to employ a presenting officer having more than two pending disciplinary cases on hand.
- There may be few qualified officers in the organisation to defend the charged officers.
- **Supreme Court held :**
- Amendment aimed at expeditious culmination of disciplinary proceedings.
- To prevent monopoly of defence officers.
- It is just, proper and necessary in public interest.
- The law in this Country does not concede an absolute right of representation to an employee in domestic enquiries.

C.L. Subramaniam Vs. Collector of Customs

AIR 1972 SC 2178

- Govt. servants by and large have no legal training.
- When a man is charged with the breach of rule entailing serious consequence, he is not likely to be in a position to present his case as best as it should be .
- It regulates the guarantee given to Govt. servants under Article 311.
- The appellant had not been afforded a reasonable opportunity to defend himself.

State Bank of India & Ors. Vs. K.P. Narayanan Kutty AIR 2003 SC 1100

- Respondent was working as Manager in State Bank of India.
- On the allegation of misconduct and irregularities, disciplinary proceedings were initiated against him.
- Enquiry Officer after enquiry, submitted a report holding that some charges were proved and some were not proved.
- The disciplinary authority, while accepting the finding of Enquiry Officer to the extent that some charges were proved and some were not proved, however, did not agree with the report of Enquiry Officer as regards to the finding that charges were partly proved.

- Disciplinary authority held that those were fully proved.
- Disciplinary authority recommended for dismissal of the respondent from service.
- The Competent Authority accepted the recommendations and passed the order of dismissal from service.
- Respondent filed appeal against the said order but failed.
- Thereafter, he filed writ petition before High Court challenging the order of dismissal.
- High Court (Single Judge) accepted the writ on the ground that no opportunity was given to the respondent by disciplinary authority in regard to the charges with which the findings of the Inquiry Officer were not agreed to by the disciplinary authority.
- Appellant (Bank) went before Division Bench which also did not find any reason to differ with the judgement of single Bench.

- While deciding the writ in favour of respondent, the High court applied the law laid down by Supreme Court in :

Punjab National Bank Vs. Kunj Behari Mishra

AIR 1998 SC 2713

In this Case Supreme Court has held :

- "Disciplinary Enquiry" - Natural Justice rule - Inquiry Officer's report in favour of delinquent - Disciplinary authority proposing to differ - Must give opportunity of hearing to delinquent before recording its conclusions."
- The Appellant (Bank) went before Supreme Court in the present case in appeal.
- Appellant argued that it was not necessary to provide opportunity by Disciplinary Authority in terms of the regulations governing service conditions of respondent.

- It was argued that he got opportunity before Enquiry Officer to put forth his case.
- It was argued that respondent did not show any prejudice caused to him in not getting the copy of report.

Supreme Court :-

- Agreed with the decision given in Punjab National Bank's case.
- The delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer.
- Fact that, in absence of such opportunity no prejudice was caused to delinquent, is immaterial.

RIGHTS OF CHARGED OFFICER

CBI ACADEMY, GHAZIABAD

- Role of Charged Officer Comes after the delivery of Charge Sheet
- Strict Rules of Evidence Act are not applicable in Departmental Proceeding.
- The Principles of 'Natural Justice' say that Charged Officer should get chance to prove his innocence.

- Art. 311 of Constitution lays down that no person holding a civil post shall be dismissed, removed, compulsory retired or reduced in rank, unless an enquiry is held and given reasonable opportunity of having heard in respect of charges.

What is to be given

- Copy of Article of Charge
- Statement of Imputation of Misconduct or Misbehaviour
- List of Documents & Witnesses by which each Article of Charge is proposed to be substantiated

Rights based on the principles of Natural Justice

- Right to get assistance of co-employee to defend his case.
- Assistance of Legal Practitioner.

- **C.O. has not a fundamental right to be represented by a lawyer.**
- **When lawyer can be permitted :-**
 - **Presenting Officer is a qualified legal person.**
 - **If complicated legal question arose during the enquiry proceedings.**
 - **Nature of documentary evidence produced in the case.**

- **Charged officer (Delinquent Official) to submit written statement of his defence.**
- **He can desire to be heard in person.**
- **He can inspect the documents before submitting written statement (or at preliminary hearing)**
- **If documents are voluminous, he can inspect the same.**

- **If enquiry is to proceed, he shall be given copy of appointment order of Inquiry Officer.**
- **C.O. is entitled to ask for some additional documents to prove his innocence.**
- **C.O. is to be paid subsistence allowance (in case of his suspension) so that he may appear and defend himself in inquiry.**

- **C.O. has right to cross examine the witnesses of department.**
- **He is entitled to remain present throughout the enquiry.**
- **C.O. has right to submit list of witnesses to be examined on his behalf.**

- **The copy of the inquiry report to be given to C.O. to enable him to make submission in regard to the findings of enquiry.**
- **He should be given sufficient time to make representation against the report.**

Violation of the rights of C.O.

- Non-supply of the relevant documents.
- Not giving opportunity to cross examine.
- Non supply of a copy of the report of E.O.
- Examining witnesses at the back of C.O.
- Relying upon the materials/documents against C.O. without given him an opportunity to explain the same.

THANK YOU

CBI ACADEMY, GHAZIABAD